

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANTHONY M. CHASSER
and
JOHN R. SCHNEIDER

Appeal No. 2005-0898
Application No. 10/047,527

ON BRIEF

Before KIMLIN, PAK and WALTZ, Administrative Patent Judges.

KIMLIN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 5-7, 9, 13-15 and 18. Claim 18 is illustrative:

18. A coated aluminum substrate containing a cured coating derived from a coating composition comprising:

- a. a polymer containing carboxylic functional groups;
- b. a beta hydroxyalkylamide curing agent having functional groups reactive with the functional groups of the polymer which is present in an amount sufficient to cure the polymer; and

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c. 0.5 to 10 weight percent based on the total weight of resin solids in the coating composition of 2,6-di-tert-butyl-4-methyl-phenol, the coated substrate being characterized as having improved filiform corrosion resistance compared to a similar coated substrate that does not contain (c) in the cured coating.

The examiner relies upon the following references as evidence of obviousness:

Geary et al. (Geary)	4,801,680	Jan. 31, 1989
Nakae et al. (Nakae)	5,719,212	Feb. 17, 1998
Chasser et al. (Chasser)	6,069,221	May 30, 2000
Laver	6,103,794	Aug. 15, 2000

Appellants' claimed invention is directed to an aluminum substrate coated with a composition comprising the recited components, including 2,6-di-tert-butyl-4-methyl-phenol. According to appellants, "[t]he coated substrate is explicitly characterized as having improved filiform corrosion resistance compared to a similar coated substrate that does not contain 2,6-di-tert-butyl-4-methyl-phenol in the cured coating" (page 4 of Brief, second paragraph). We are told that "[f]iliform corrosion appears as a filamentous, worm-like defect under a coating layer, adversely affecting appearance, and worse, often leads to coating delamination (peeling), making it a serious problem" (page 5 of Brief, first paragraph).

Appealed claims 5-7, 9, 13-15 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Geary in view of

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Laver and Nakae. Claims 5, 6, 13-15 and 18 also stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Chasser in view of Laver and Nakae.¹

In accordance with the grouping of claims set forth at page 6 of appellants' brief, the following groups of claims stand or fall together:

- (I) claims 5, 6, 13, 14 and 18;
- (II) claims 7 and 9; and
- (III) claim 15.

We have thoroughly reviewed each of appellants' arguments for patentability. However, we are in complete agreement with the examiner that the claimed subject matter would have been obvious to one of ordinary skill in the art within the meaning of § 103 in view of the applied prior art. Accordingly, we will sustain the examiner's rejections for the reasons set forth in the Answer, which we incorporate herein, and we add the following for emphasis only.

There is no dispute that the primary references, Geary and Chasser, disclose, like appellants, aluminum substrates having a coating of the presently claimed (a) polymer containing

¹ The examiner has withdrawn the final rejections under 35 U.S.C. § 112 and 35 U.S.C. § 102.

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carboxylic functional groups and (b) a beta hydroxyalkylamide curing agent, as well as a phenolic antioxidant. As recognized by the examiner, neither Geary nor Chasser discloses the particular phenolic antioxidant presently claimed, namely, 2,6-di-tert-butyl-4-methyl-phenol. However, as explained by the examiner, Nakae teaches the claimed phenolic antioxidant as one of five preferred phenolic antioxidants, which preferred list also includes the phenolic antioxidant disclosed by Geary and Chasser (Irganox® 1076). Accordingly, based on the collective teachings of the applied references, we find that the examiner has drawn the proper legal conclusion that one of ordinary skill in the art would have found it prima facie obvious to substitute the presently claimed phenolic antioxidant for the one disclosed in Geary and Chasser. We agree with the examiner that, based on the collective teachings of the prior art, one of ordinary skill in the art would have reasonably expected that use of the presently claimed phenolic antioxidant in the compositions of Geary and Chasser would produce coatings having improved blocking resistance and melt processability.

The principal argument advanced by appellants is that since "Nakae discloses a different powder coating composition relying

on a different cure chemistry, comprising an epoxy group-containing acrylic resin; a polycarboxylic acid; and an anti-oxidant having a melting point of from 50° to 140°C" (page 8 of Brief, second paragraph), one of ordinary skill in the art would not have found any teaching or suggestion in Nakae that the antioxidants used therein would be useful in compositions like Geary and Chasser, which have different cure chemistry. However, as properly noted by the examiner, the phenolic antioxidant is not reactive with the polymer binder compositions of Geary and Chasser and, therefore, one of ordinary skill in the art would not have been dissuaded from using the equivalent phenolic antioxidants disclosed by Nakae in the compositions of Geary and Chasser.

Appellants also contend that there is no teaching or suggestion in Nakae that the claimed phenolic antioxidant would be better than the Irganox® 1076 antioxidant disclosed in Geary and Chasser. However, it is not necessary for a finding of obviousness that Nakae teach that the claimed antioxidant is better. As set forth by the examiner, all that is required is that Nakae teach that the five preferred antioxidants are equivalent, such that it would have been expected that the

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preferred antioxidants of Nakae are interchangeable in the compositions of Geary and Chasser.

As a final point, we note that appellants base no argument upon objective evidence of nonobviousness, such as unexpected results, which would serve to rebut the prima facie case of obviousness established by the examiner. While appellants make reference to comparative results found in the specification in their SUMMARY OF THE INVENTION at page 4 of the Brief, appellants have not argued that the results would have been truly unexpected by one of ordinary skill in the art. In re Merck & Co., 800 F.2d 1091, 1099, 231 USPQ 375, 381 (Fed. Cir. 1986). Indeed, the ARGUMENT section of appellants' Brief fails to mention the specification data. It is well settled that arguments not presented in the Brief are considered abandoned.

In conclusion, based on the foregoing and the reasons well-stated by the examiner, the examiner's decision rejecting the appealed claims is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv) (effective Sep. 13, 2004; 69 Fed. Reg. 49960 (Aug. 12, 2004); 1286 Off. Gaz. Pat. Office 21 (Sep. 7, 2004)).

AFFIRMED

Edward C. Kimlin
EDWARD C. KIMLIN
Administrative Patent Judge

CHUNG K. PAK
Administrative Patent Judge

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THOMAS A. WALTZ
Administrative Patent Judge

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